In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-122

PETER RICHARD FARLAND AND MEYER BRODY,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioners were convicted on ten counts of mail fraud, in violation of 18 U.S.C. 1341. They were sentenced to three months' imprisonment. The court of appeals affirmed without opinion.

Petitioner Farland was the owner of Allstate Furnace Company and petitioner Brody was a salesman for that company. The evidence showed that representatives of Allstate gained admission to the dwellings of homeowners in New York and New Jersey by offering to clean and inspect the homeowners' fur-

naces. In fact the principal business of Allstate was the sale of equipment. The salesmen (including, at times, both petitioners) misrepresented that the homeowners' furnaces were unsafe and could not be repaired; this was done in order to induce them to purchase new furnaces for between $1400 and $1900. All of the witnesses at trial testified that they purchased their furnaces on credit, and signed promissory notes, usually printed by the Gramatan Company, Ltd. in Bronxville, New York. Allstate did a regular business with Gramatan, selling them the promissory notes at a discount. After buying the notes, Gramatan mailed payments books to the homeowners and collected the debts over a period of years. Gramatan officers indicated that if collections had not been forthcoming from the customers, it would have ceased doing business with Allstate.

Petitioners contend that the mailings by Gramatan were not sufficiently related to the fraudulent scheme to support a conviction under Section 1341. However, credit was essential to petitioner's operation, and petitioners clearly contemplated that the use of the mails would occur to collect the debts incurred by the victimized homeowners. The mailings thus were sufficiently causally connected to the scheme notwithstanding that they occurred after the fraudulent conduct, and that they were carried out by Gramatan. See *United States* v. *Sampson*, 371 U.S. 75; *United States* v. *Kellerman*, 431 F. 2d 319, 322–323 (C.A. 2), certiorari denied, 400 U.S. 957.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971